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6 UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

7 IN RE:

8 HEIDI A. STAFFORD AND TYSON J.
9 STAFFORD,

10 Debtors.

Case No. 13-19709

(Chapter: 7)

Adv, Pro.

11 HEIDI A. STAFFORD AND TYSON J.
12 STAFFORD,

13 Plaintiffs,

14 v.

15 NAVIENT SOLUTIONS, INC, PNC BANK,
16 N.A. AND NATIONAL COLLEGIATE
TRUST

17 Defendants.

COMPLAINT TO DETERMINE
DISCHARGEABILITY OF STUDENT
LOANS

18
19 Heidi A. Stafford And Tyson J. Stafford, the Debtors and Plaintiffs in this case
20 (“Staffords”), file their Complaint to Determine Dischargeability of Student Loan Debt pursuant
21 to 11 USC § 523(a)(8) and state:

22 **I.**

23 **JURISDICTION AND VENUE**

24 1. This Court has jurisdiction over this action under 28 U.S.C. § 1334. This matter
25 is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (B) and (I) and (O).
26

27 2. Venue is proper in this Court pursuant to 28 U.S.C. § 1409.

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II.

PARTIES

3 3. The Plaintiffs are individuals and Chapter 7 Debtors in the above referenced
4 bankruptcy case.

5 4. Defendant Navient Solutions, Inc (“Navient”) who services loans for SLM
6 Education Credit Finance Corporation (“SLM ECFC”) may be served by mail sent to Albert L.
7 Lord, the CEO, or other officers of the Corporation at 12061 Bluemont Way, Reston, VA 20190.

8 5. Defendant National Collegiate Trust may be served by mail to its registered agent,
9 Delaware Trust Company, N.A., 300 Delaware Ave, 9th Floor, Wilmington, DE 19801.

10 6. Defendant PNC Bank, N.A. may be served may be served by certified mail sent to
11 its CEO, William S. Demchak at the PNC Financial Services Group, Inc., 249 Fifth Avenue,
12 Pittsburgh, PA 15222.

III.

FACTUAL BACKGROUND

16 7. The Staffords filed their voluntary petition for relief under Chapter 11 of the
17 United States Code (the “Bankruptcy Code”) on October 31, 2013, and converted the case to
18 Chapter 7 on July 10, 2014.

19 8. The Staffords are obligated to pay Navient as servicer for student loans held by
20 SLM ECFC in the estimated amount of \$492,156.44 as evidenced by the **Exhibit A and Exhibit**
21 **B** to this Complaint. The Plaintiffs co-signed many of these loans for each other.

22 9. The Staffords are obligated to pay National Collegiate Trust in the estimated
23 amount of \$93,628.41.

24 10. The Staffords are obligated to pay PNC Bank, N. A. the estimated amount of
25 \$39,750.17.

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1 11. Heidi Stafford is obligated to pay Nelnet on behalf of the US Department of
2 Education the estimated amount of \$67,587.90. She consolidated her student loans under the
3 Income Contingent Borrower Repayment program with the William Ford Direct Loan program
4 prior to bankruptcy and currently has a \$0.00 payment plan.

5 12. Tyson Stafford is obligated to pay FedLoan Servicing on behalf of the US
6 Department of Education the estimated amount of \$68,784.49. He consolidated his student loans
7 under the Income Contingent Borrower Repayment program with the William Ford Direct Loan
8 program prior to bankruptcy and currently has a \$0.00 payment plan.

9 13. The total student loans for the Staffords are estimated at \$761,907.40.

10 14. Plaintiffs Heidi A. Stafford is currently employed and Tyson J. Stafford is
11 unemployed. Mrs. Stafford works as a casino dealer at the Red Dragon Casino in Seattle, WA
12 where she is a table games dealer making minimum wage plus tips. Mr. Stafford was recently
13 laid off as a bartender at the Lobby Bar in Seattle, WA. He is currently looking for work and
14 freelances photography work when available.

15 15. Heidi A. Stafford looked into further employment as a professor of photography,
16 but she was not able to transfer credits from Books Institute to the University of Washington to
17 obtain a master's degree in photography. She was told that Brooks Institute was not regionally
18 accredited.

19 16. Heidi Stafford worked as a wedding photographer for several years after
20 graduation from Brooks Institute and Tyson Stafford worked as a freelance photographer, but
21 neither of them were able to make ends meet and had few prospects to increase their wage
22 employment in that field despite considerable efforts to do so.

23 17. The Staffords graduated from the Brooks Institute in 2008. At the time of their
24 financial aid exit interview, Plaintiff Heidi A. Stafford received information from Brooks
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1 Institute that during her time at the school she received a total disbursement of student loans in
2 the amount of \$163,641.00, including \$47,071.00 in federal student loans and \$116,570.00 in
3 private student loan. **Exhibit C.**

4 18. At the time of his financial aid interview, Plaintiff Tyson J. Stafford received
5 information from Brooks Institute that during his time at the school he received a total
6 disbursement of student loans in the amount of \$160,641.00, including \$47,071.00 in federal
7 student loans and \$160,641.00 in private student loans. **Exhibit D.**

8 19. In addition to the student loans received and processed through Brooks Institute,
9 Tyson J. Stafford received a private student loan known as an ACT II College Loan from PNC
10 Bank, NA for \$30,000.00 in May 2008 with his wife Heidi Stafford as a co-signer on the loan.
11

12 20. Heidi A. Stafford also received additional private student loans from Bank of
13 America in May 2007 from the Alpine Loan Program in the original amount of \$33,519.55.
14 Bank of America sold those loans to National Collegiate Trust.
15

16 21. Tyson J. Stafford also received additional private student loans from Bank of
17 America in November 2006 from the Alpine Loan Program in the original amount of
18 \$33,149.17. Bank of America sold those loans to National Collegiate Trust.

19 22. Lastly, the Staffords were eligible and received Pell Grants during their education
20 at Brooks Institute. Heidi A. Stafford received \$3,560.00 for the 2007-2008 school year and
21 \$2,761.00 for the 2008-2009 school year. Tyson J. Stafford also received \$3,560.00 for the
22 2007-2008 school year and \$2,761.00 for the 2008-2009 school year.
23

24 **IV.**

25 **CAUSES OF ACTION**

26 **Count I – NON DISCHARGEABILITY UNDER SECTION 523(a)(8)**

1 23. Plaintiffs repeat and re-allege the allegations set forth in paragraphs 1 through 22
2 of this Complaint as set forth at length herein.

3 24. Bankruptcy Code Section 523(a)(8) provides, in relevant part, that:

4 a) a discharge under section 727, 1141, 1228(a), 1228(b) or 1328(b) of this title
5 does not discharge an individual debtor from any debt –

6 b) unless excepting such debt from discharge under this paragraph would impose
7 undue hardship on the debtor and the debtor's dependents, for –

8 (A)(i) an educational benefit overpayment or loan made, insured, or guaranteed
9 by a governmental unit, or made under any program funded in whole or in part by a
10 governmental unit or nonprofit institution; or

11 (ii) an obligation to repay funds received as an educational benefit, scholarship, or
12 stipend; or

13 (B) any other educational loan that is a qualified education loan, as defined in
14 section 221(d)(1) if the Internal Revenue Code of 1986, incurred by the debtor who is an
15 individual;

16 25. Section 221(d)(1) of the Internal Revenue Code provides, in pertinent part, that:

17 **(1) Qualified education loan**

18 The term “qualified education loan” means any indebtedness incurred by the
19 taxpayer solely to pay qualified higher education expenses----

20 (A) which are incurred on behalf of the taxpayer, the taxpayer's spouse, or any
21 dependent of the taxpayer as of the time the indebtedness was incurred,

22 (B) which are paid or incurred within a reasonable period of time before or after
23 the indebtedness is incurred, and
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1 (C) which are attributable to education finished during a period during which the
2 recipient was an eligible student.

3 26. Upon investigation by Plaintiffs' attorney, Plaintiffs do not believe their loans to
4 the Defendants meet requirements for the exemption from discharge provided under §523(a)(8)
5 of the Bankruptcy Code.

6 27. Specifically, Plaintiffs do not believe that their loans meet the definitional
7 requirements for exemption because they do not believe the loan was made for "qualified higher
8 education expenses," that Brooks Institute was not an "eligible educational institution," and does
9 not believe that they were "eligible students" as those terms are defined by 26 USC 221(d) which
10 is referred in §523(a)(8)(B) for the discharge of "qualified educational loans."

12 28. Nor are Defendants' loans an educational benefit overpayment or loan made,
13 insured, or guaranteed by a governmental unit or any program funded by a governmental unit or
14 nonprofit institution. And Defendants' claim do not stem from an obligation to repay funds
15 received as an educational benefit, scholarship, or stipend.

17 29. Since it is the Creditor's burden to establish that its claim qualifies for the
18 exemption under §523(a)(8), Debtors requests that the Defendants do so.

19 **COUNT II - Undue Hardship**

20 30. Plaintiffs repeat and re-allege the allegations set forth in paragraphs 1 through 28
21 of this Complaint as set forth at length herein.

22 31. Student loans are excepted from discharge "unless excepting such debt from
23 discharge under this paragraph will impose an undue hardship on the Debtors and the Debtors'
24 dependents. 11 U.S.C. §523(a)(8).
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32. Plaintiffs request that the Court determine that the debts owed to the above named Defendants are discharged pursuant to Section 523(a)(8) because excepting such debt from discharge will work an undue hardship on Plaintiffs and Plaintiff's dependents.

WHEREFORE, the Plaintiffs requests the Court to:

(1) Declare that the subject loan does not meet the statutory definitions provided in 18 USC §523(a)(8) for exception from discharge and is therefore dischargeable under 11 USC §727;

(2) Alternatively, in the event the Court does determines the loan is excepted from discharge as an educational loan, Debtors prays for an order from the Court declaring the loan dischargeable under 11 USC §523(a)(8) as an undue hardship to the Debtors.

Dated this December 8, 2014

HENRY, DEGRAAFF & MCCORMICK, P.S.

By: /s/ Christina L Henry
Christina L Henry, WSBA# 31273
Attorney for the Plaintiffs

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EXHIBIT A

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Borrower Name		Acct#									
Heidi A Stafford		4630									
CLASS/FDR	Loan type	Disbursement Date	Amount	Outstanding Loan Balance/Principal	Unpaid/Accrued interest // Interest accrued each Billing Cycle	Late/Fees	Other charges	Cycle/Due Date	Cosigner	claim and loan information	loan owner
1	Excel Grad	12/3/2003	\$5,376.34	\$5,797.73	\$24.72	\$0.00	\$0.00	8		claim 8-1	SLM ECFC
2	Signature	11/8/2005	\$30,573.00	\$89,061.94	\$783.84	\$0.00	\$0.00	8		claim 8-1	SLM ECFC
6	Signature	7/11/2006	\$29,501.00	\$60,919.51	\$384.45	\$0.00	\$0.00	8		claim 9-1	SLM ECFC
9	Signature	3/6/2007	\$24,346.00	\$46,811.60	\$295.38	\$0.00	\$0.00	8	Tyson Stafford	claim-10-1	SLM ECFC
12	Signature	11/6/2007	\$21,722.00	\$34,917.30	\$187.40	\$0.00	\$0.00	8	Tyson Stafford	claim 11-1	SLM ECFC
15	Signature	7/21/2008	\$10,428.00	\$18,600.90	\$131.34	\$0.00	\$0.00	8	Tyson Stafford		SLM ECFC

EXHIBIT B

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Borrower Name
Tyson J Stafford

Acc#

1265

CLASS/ DR Loan #	Loan type	Disburse- ment Date	Amount	Outstanding Loan Balance/Principal Balance	Unpaid/Accrued interest // Interest accrued each Billing Cycle	Late/Fees	Other charges	Cycle/Due Date	Cosigner	claim and loan information	loan owner
1 Signature		10/25/2005	\$26,474.00	\$75,405.52	\$595.76	\$0.00	\$0.00	21		claim 14-1	SLM ECFC
7 Signature		7/11/2006	\$29,620.00	\$60,453.72	\$352.72	\$0.00	\$0.00	21		claim 12-1	SLM ECFC
10 Signature		3/20/2007	\$24,701.00	\$46,840.50	\$273.42	\$0.00	\$0.00	21	Heidi Stafford	claim 13-1	SLM ECFC
13 Signature		11/6/2007	\$22,222.00	\$35,372.47	\$177.52	\$0.00	\$0.00	21	Heidi Stafford	claim 15-1	SLM ECFC
16 Signature		7/21/2008	\$10,553.00	\$16,975.25	\$120.56	\$0.00	\$0.00	21	Heidi Stafford		SLM ECFC

EXHIBIT C

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Heidi, Stafford, 1810 NE 177th ST, Shoreline, WA 98155;

Total of all loans disbursed: \$163,641

Summary of loans disbursed to you at Brooks Institute

The information below represents the loan amounts that were delivered to the institution by your loan provider. The actual amount borrowed may be greater, because any fees deducted by your loan provider will be added to your loan debt. Your loan provider will send you more specific repayment information.

You may also review your federal loan information (i.e., Subsidized Federal Stafford Loan, Unsubsidized Federal Stafford Loan and Graduate PLUS Loan) by logging on to the National Student Loan Data System (NSLDS) at <http://www.nslds.ed.gov>.

Federal Subsidized Stafford Loan - Total Awarded : \$22,381

\$2,546	10/28/05 - 06/24/06	809081 - Stillwater National Bank
\$3,500	07/14/06 - 03/03/07	809081 - Stillwater National Bank
\$5,445	03/09/07 - 10/27/07	809081 - Stillwater National Bank
\$5,500	11/02/07 - 06/21/08	809081 - Stillwater National Bank
\$5,390	07/11/08 - 12/20/08	809081 - Stillwater National Bank

Federal Unsubsidized Stafford Loan - Total Awarded : \$24,690

\$3,880	10/28/05 - 06/24/06	809081 - Stillwater National Bank
\$4,000	07/14/06 - 03/03/07	809081 - Stillwater National Bank
\$4,950	03/09/07 - 10/27/07	809081 - Stillwater National Bank
\$5,000	11/02/07 - 06/21/08	809081 - Stillwater National Bank
\$6,860	07/11/08 - 12/20/08	809081 - Stillwater National Bank

Total of all federal loans disbursed: \$47,071. Remember, the amount disbursed above does not include loan fees and the repayment terms can vary.

The following is provided as an estimate of the average anticipated monthly repayment amount you might expect based on the amount of your indebtedness. Examples of monthly repayment amounts given below are based on standard repayment options consisting of equal monthly installments over a period of up to 120 months (10-years) and the amount disbursed above. **Because student loan payments will be at least \$50 per month, certain loan balances may be repaid in less than 120 months.** In this example, payments and interest amounts are rounded. *These figures are provided as estimates only, to provide you with a general idea of your monthly payment amount. There are online loan repayment calculators available as well, check out :* <http://www.finaid.org/calculators/loanpayments.phtml> or <http://studentaid.ed.gov> (click on Repay Your Loans).

Repayment terms can vary from those shown, depending on the type of loan and date of first disbursement. Please contact your loan provider for more detailed information.

EXHIBIT C

Total federal education loans disbursed amount \$47,071 with repayment term of up to 120 months	If your interest is:		
	6.8 %	8.25 %	9 %
The anticipated monthly payment amount would be	\$ 541.70	\$ 577.34	\$ 596.28

Federal Aggregate (total combined borrowing) Loan Limits

- Dependent Undergraduate \$31,000 (combined subsidized and unsubsidized) with subsidized limit of \$23,000
- Independent Undergraduate \$57,500 (combined subsidized and unsubsidized) with subsidized limit of \$23,000
- Graduate \$138,500 (combined subsidized and unsubsidized and includes amount from undergraduate loans) with a subsidized limit of \$65,500
- Graduate PLUS no dollar aggregate but may not exceed COA(-) other Aid

Alternative Loan - Total Awarded : \$116,570

\$30,573	10/28/05 - 06/24/06	Stillwater - ALTLN/RECOURSE/ELF
\$29,501	07/14/06 - 03/03/07	Stillwater - ALTLN/RECOURSE/ELF
\$24,346	03/09/07 - 10/27/07	900977 - Sallie Mae Bank of Utah
\$21,722	11/02/07 - 06/21/08	900977 - Sallie Mae Bank of Utah
\$10,428	07/11/08 - 12/20/08	900977 - Sallie Mae Bank of Utah

Total of all loans disbursed: \$163,641

Contact Information:

If you have questions, contact your lender or *servicer*:

809081 - Stillwater National Bank, PO Box 9425, WILKES BARRE, PA, 18773-9425, (888)272-4665

900977 - Sallie Mae Bank of Utah, PO Box 9435, WILKES BARRE, PA, 18773-9435, (888)272-4665

Stillwater - ALTLN/RECOURSE/ELF, 1002 Arthur Dr, Lynn Haven, FL, 32444, (800)828-0290

Sallie Mae Loan Servicing Center, 1002 Arthur Dr., Lynn Haven, FL, 32444, (888)272-5543

EXHIBIT D

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Tyson, Stafford, 1810 NE 177th St., Shoreline, WA 98155;

Total of all loans disbursed: \$160,641

Summary of loans disbursed to you at Brooks Institute

The information below represents the loan amounts that were delivered to the institution by your loan provider. The actual amount borrowed may be greater, because any fees deducted by your loan provider will be added to your loan debt. Your loan provider will send you more specific repayment information.

You may also review your federal loan information (i.e., Subsidized Federal Stafford Loan, Unsubsidized Federal Stafford Loan and Graduate PLUS Loan) by logging on to the National Student Loan Data System (NSLDS) at <http://www.nslds.ed.gov>.

Federal Subsidized Stafford Loan - Total Awarded : \$18,931

\$2,546	10/28/05 - 06/24/06	809081 - Stillwater National Bank
\$3,500	07/14/06 - 03/03/07	809081 - Stillwater National Bank
\$5,445	03/09/07 - 10/27/07	809081 - Stillwater National Bank
\$5,500	11/02/07 - 06/21/08	809081 - Stillwater National Bank
\$1,940	07/11/08 - 12/20/08	809081 - Stillwater National Bank

Federal Unsubsidized Stafford Loan - Total Awarded : \$28,140

\$3,880	10/28/05 - 06/24/06	809081 - Stillwater National Bank
\$4,000	07/14/06 - 03/03/07	809081 - Stillwater National Bank
\$4,950	03/09/07 - 10/27/07	809081 - Stillwater National Bank
\$5,000	11/02/07 - 06/21/08	809081 - Stillwater National Bank
\$10,310	07/11/08 - 12/20/08	809081 - Stillwater National Bank

Total of all federal loans disbursed: \$47,071. Remember, the amount disbursed above does not include loan fees and the repayment terms can vary.

The following is provided as an estimate of the average anticipated monthly repayment amount you might expect based on the amount of your indebtedness. Examples of monthly repayment amounts given below are based on standard repayment options consisting of equal monthly installments over a period of up to 120 months (10-years) and the amount disbursed above. **Because student loan payments will be at least \$50 per month, certain loan balances may be repaid in less than 120 months.** In this example, payments and interest amounts are rounded. *These figures are provided as estimates only, to provide you with a general idea of your monthly payment amount. There are online loan repayment calculators available as well, check out :* <http://www.finaid.org/calculators/loanpayments.phtml> or <http://studentaid.ed.gov> (click on Repay Your Loans).

Repayment terms can vary from those shown, depending on the type of loan and date of first disbursement. Please contact your loan provider for more detailed information.

Total federal education loans disbursed amount \$47,071 with repayment term of up to 120 months	If your interest is:		
	6.8 %	8.25 %	9 %
The anticipated monthly payment amount would be	\$ 541.70	\$ 577.34	\$ 596.28

Federal Aggregate (total combined borrowing) Loan Limits

- Dependent Undergraduate \$31,000 (combined subsidized and unsubsidized) with subsidized limit of \$23,000
- Independent Undergraduate \$57,500 (combined subsidized and unsubsidized) with subsidized limit of \$23,000
- Graduate \$138,500 (combined subsidized and unsubsidized and includes amount from undergraduate loans) with a subsidized limit of \$65,500
- Graduate PLUS no dollar aggregate but may not exceed COA(-) other Aid

EXHIBIT D

Alternative Loan - Total Awarded : \$113,570

\$26,474	10/28/05 - 06/24/06	Stillwater - ALTLN/RECOURSE/ELF
\$29,620	07/14/06 - 03/03/07	Stillwater - ALTLN/RECOURSE/ELF
\$24,701	03/09/07 - 10/27/07	900977 - Sallie Mae Bank of Utah
\$22,222	11/02/07 - 06/21/08	900977 - Sallie Mae Bank of Utah
\$10,553	07/11/08 - 12/20/08	900977 - Sallie Mae Bank of Utah

Total of all loans disbursed: \$160,641**Contact Information:**

If you have questions, contact your lender or *servicer*:

809081 - Stillwater National Bank, PO Box 9425, WILKES BARRE, PA, 18773-9425, (888)272-4665

900977 - Sallie Mae Bank of Utah, PO Box 9435, WILKES BARRE, PA, 18773-9435, (888)272-4665

Stillwater - ALTLN/RECOURSE/ELF, 1002 Arthur Dr, Lynn Haven, FL, 32444, (800)828-0290

Sallie Mae Loan Servicing Center, 1002 Arthur Dr., Lynn Haven, FL, 32444, (888)272-5543